

REMARKS

Claims 1-14 are pending in the present application. Claims 1-14 were rejected. No claims have been amended.

Applicant thanks the Examiner for accepting the replacement drawings provided in the previous amendment.

I. Rejection of Claims 1, 4, 11, 12, and 14 under 35 U.S.C. § 102(b)

Claims 1, 4, 11, 12, and 14 are rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent Application No. 2001/0021196 A1 (“Weigl”). Applicant respectfully submits that the rejection should be withdrawn for at least the following reasons.

To anticipate a claim under 35 U.S.C. § 102(b), a single prior art reference must identically disclose each and every claim feature. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claim feature is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Additionally, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 1 recites, in relevant parts, “transmitting messages in transmission time slots at a preselected transmission rate, **a transmission rate within a transmission time slot being changeable** in such a way that a message provided for the transmission time slot is transmitted repeatedly within the transmission time slot.” Similarly, claims 11 and 14 recite, in relevant parts, “second **means for changing a transmission rate within a transmission time slot** in such a way that a message provided for the transmission time slot is transmitted repeatedly within the transmission time slot.”

In support of the rejection, the Examiner cites paragraph [0007] of Weigl as disclosing the claimed feature of “**a transmission rate within a transmission time slot being changeable**,” i.e., the Examiner contends that paragraph [0007] of Weigl discloses that “reference messages are transmitted and the message is repeatedly transmitted at a specific time interval and the message is controlled by a function of time.” However, even if one assumed for the sake of argument that the Examiner was correct in stating that Weigl discloses “the message is controlled by a function of time,” this assertion has logically nothing to do with the claimed feature of “**a transmission rate within a transmission time slot being changeable**.” Paragraph [0007] of Weigl recites the following:

Thus, the present invention advantageously includes a method and a device for the exchange of data in messages between at least two users which are connected by a bus system, the messages containing the data being transmitted by the users via the bus system, and each user containing a predefinable and/or ascertainable timing mark; a first user, in a function as timer, controls the messages as a function of time in such a way that it **repeatedly transmits a reference message**, which contains time information of the first user, **via the bus at a specifiable time interval**, and if the timing mark of the second user is reached without a reference message of the first user reaching the second user, the at least second user takes over the function of timer by transmitting its own reference message with its own time information via the bus system.

To the extent the Examiner is relying on the phrase “controls the messages as a function of time” in Weigl as somehow suggesting the claimed feature of “**a transmission rate within a transmission time slot being changeable**,” it is clear from the disclosure of Weigl that the recited “function of time” has nothing to do with a changeable transmission rate. In fact, the subsequent statement in paragraph [0007] that the first user “**repeatedly transmits a reference message**, which contains time information of the first user, via the bus **at a specifiable time interval**,” clearly suggests that the transmission rate is **fixed** “at a specifiable time interval,” and is **not changed**. In any case, the mere statement that the first user “controls the messages as a function of time” clearly does not suggest that the transmission rate within a transmission time slot is changeable.

For at least the foregoing reasons, independent claims 1, 11, and 14, as well as their dependent claims 4 and 12, are allowable over Weigl.

II. Rejection of Claims 2, 3, 5-10, and 13 under 35 U.S.C. § 103(a)

Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Weigl. Claims 2, 3, 8-10, 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weigl in view of U.S. Patent No. 4,709,376 ("Kage"). Claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weigl in view of U.S. Patent Application No. 2002/0126691 ("Strong"). Applicant respectfully submits that the rejections should be withdrawn for at least the following reasons.

Claims 2, 3, 5-10 and 13 ultimately depend from claim 1 or claim 11. As noted above in connection with claims 1 and 11, Weigl fails to teach or suggest "**a transmission rate within a transmission time slot being changeable** in such a way that a message provided for the transmission time slot is transmitted repeatedly within the transmission time slot." Since the Examiner's assertions with regard to the additional features of claim 5 do not remedy the deficiencies of Weigl as applied against parent claim 1, and since the teachings of the secondary references Kage and Strong clearly do not remedy the deficiencies of Weigl as applied against parent claims 1 and 11, the overall teachings of Weigl, Kage and Strong cannot render obvious dependent claims 2, 3, 5-10 and 13.

For at least the foregoing reasons, rejections of claims 2, 3, 5-10 and 13 should be withdrawn.

CONCLUSION

It is respectfully submitted that all pending claims of the present application are in allowable condition. Prompt reconsideration and allowance of the application are respectfully requested.

Respectfully Submitted,

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